

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAVID JEROME WADE, DEJA
DENICE-DAYVE WEST, RAVEN BRIANNA
JOHNSON, and NICOLA EVON JOHNSON,
Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
February 21, 2006

Petitioner-Appellee,

v

BRIAN CLIFTON JOHNSON,

No. 264648
Wayne Circuit Court
Family Division
LC No. 90-285159-NA

Respondent-Appellant,

and

SHERICE SHARONE SHANNON and DAVID J.
WADE,

Respondents.

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor children Raven Johnson and Nicola Johnson, pursuant to MCL 712A.19b(3)(h) and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In February 2002, the trial court found that respondent-appellant had physically abused one of his girlfriend's children by beating the child with a braided belt. That child, plus two of her siblings, were removed from their mother's care and brought under the court's jurisdiction. In December 2002, this same girlfriend gave birth to the minor child, Raven Johnson. Raven's putative father was respondent-appellant, while her legal father was the girlfriend's husband, to whom she was still married. Respondent-appellant attempted to establish his paternity of the child and, in the mistaken belief that he had succeeded, petitioner provided him with a case service plan in June 2003. In August 2003, respondent-appellant was jailed after a violent assault upon his girlfriend's brother and/or his pregnant girlfriend that involved the use of a

sawed-off shotgun. Respondent-appellant's girlfriend gave birth to Nicola Johnson in September 2003 while respondent-appellant was incarcerated. Respondent-appellant's paternity of both children was not legally established until the termination trial.

On appeal, respondent-appellant first argues that the agency's failure to provide him with updated case service plans or any services while he was imprisoned was a violation of the agency's responsibilities under MCL 712A.18f(3) and (5). However, the agency was not required to provide either updated plans or services to respondent-appellant since he was not yet a "parent" as defined in MCR 3.903(7) and (17). Furthermore, even if respondent-appellant's paternity had been legally established before the termination trial, the fact that respondent-appellant was incarcerated would typically be sufficient justification under MCL 712A.18f(1)(b) for the agency not to provide updated plans or services.

Respondent-appellant next challenges the sufficiency of the evidence for termination of his rights. This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). Since respondent-appellant was due to be released from prison in November 2005, which was less than two years from the August 2004 filing date of the termination petition, the trial court clearly erred in basing termination upon MCL 712A.19b(3)(h). However, such error was harmless since at least one statutory ground for termination was established by clear and convincing evidence. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 364-365; 612 NW2d 407 (2000). Given respondent-appellant's history of violence against children and adults, termination was proper under MCL 712A.19b(3)(j). In addition, termination could also have been based upon MCL 712A.19b(3)(g)¹ since respondent-appellant failed in the past to plan for or support the children and there was no reasonable expectation that he would be able to provide proper care within a reasonable time given the children's ages.

Furthermore, the evidence failed to show that termination of respondent-appellant's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *Trejo, supra* at 356-357. Therefore, the trial court did not clearly err in terminating respondent-appellant's parental rights.

Affirmed.

/s/ Jessica R. Cooper

/s/ Kathleen Jansen

/s/ Jane E. Markey

¹ Subsection 19b(3)(g) may be applied to respondent without deprivation of due process because it was one of the statutory bases listed in the supplemental termination petition. In addition, the elements of subsection 19b(3)(g) are contained in subsection 19b(3)(h). See *In re Perry*, 193 Mich App 648, 650-651; 484 NW2d 768 (1992).